

On October 31, 2007 appellant, a 56-year-old program assistant, filed an occupational disease claim for benefits, alleging that she developed a right shoulder condition causally related to factors of her employment. She asserted that her keyboard was not moved under her desk, causing pain in her right arm and right shoulder.

In a Form CA-17 report dated October 31, 2007, Dr. Norman L. Cheung, Board-certified in orthopedic surgery and appellant's treating physician, diagnosed right shoulder tendinitis and outlined restrictions on lifting, carrying, sitting, standing, walking, simple grasping and activities requiring fine manipulation, including keyboarding.

By letter dated November 16, 2007, the Office advised appellant that it required additional information to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a report received by the Office on November 16, 2007, Dr. Cheung diagnosed right shoulder impingement syndrome and right shoulder tendinitis.

The employing establishment controverted appellant's claim. In a November 20, 2007 statement, it noted that appellant sustained serious cervical and lumbar injuries in a 1993 car accident, she also hurt her shoulder while at the Naval Air Station in 1992. The employing establishment noted that appellant alleged that she sustained her current condition because the keyboard was not under her desk and caused pain to her arm and shoulder. It asserted that appellant has not submitted factual evidence to support how 10 days of using a keyboard on top of a desk, versus under a desk, would cause shoulder impingement. The employing establishment stated that, with regard to the causal relationship of her conditions to her work, appellant's own physician noted that her conditions were not work related. It asserted that appellant's problems are degenerative in nature and that she has failed to submit sufficient evidence to support that her work-related activities are aggravating her preexisting conditions.

In a report dated November 20, 2007, Dr. Cheung stated that appellant had been experiencing work-related right shoulder and left thumb pain. He noted that her right shoulder appeared normal on examination. Dr. Cheung also diagnosed chronic low back pain.

In a December 4, 2007 report, Dr. Cheung noted appellant's complaints of her right shoulder pain, which she attributed to being transferred to a new position in July 2006 in which the keyboard position was too high for her. He stated that he gave her an injection to ameliorate her right shoulder pain.

By decision dated February 26, 2008, the Office denied appellant's claim finding that she failed to submit medical evidence sufficient to establish that she sustained the claimed right arm and right shoulder conditions in the performance of duty.

On February 26, 2008 appellant requested reconsideration. The Office did not receive any additional evidence from her.

By decision dated March 24, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and, must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

### ANALYSIS -- ISSUE 1

Appellant alleged that she sustained injury as a result of using a keyboard at work which was placed on a desk, rather than below the desk. The employing establishment has acknowledged that for a period of at least 10 days appellant did use a keyboard on her desk. The Board finds however that appellant has failed to submit any medical evidence containing a rationalized, probative report which relates her claimed right shoulder condition to factors of her employment. For this reason, appellant has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Dr. Cheung, but none of the reports he submitted provided a probative, rationalized medical opinion that the claimed right shoulder condition was causally related to employment factors. Dr. Cheung advised in his October 31 and November 16, 2008 reports that appellant had right shoulder tendinitis and right shoulder impingement syndrome. In his December 4, 2007 report, he noted appellant's belief that her right shoulder pain was caused by typing at a keyboard which was positioned at an uncomfortably high level. However, the reports from Dr. Cheung did not contain a probative, rationalized medical opinion that the claimed right shoulder condition was causally related to employment factors. His opinion is of limited probative value as it does not contain any medical rationale explaining how or why appellant's claimed right shoulder condition was currently affected by or related to factors of employment.<sup>6</sup> The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>7</sup> Dr. Cheung did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. His reports, the only evidence appellant submitted in support of her claim, did not constitute sufficient medical evidence to establish that her claimed right shoulder condition was causally related to her employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that her condition was caused, precipitated or aggravated by her employment sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim, however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed right shoulder condition was causally related to her employment. The Board therefore affirms the Office's February 26, 2008 decision denying benefits for her claimed right shoulder condition.

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<sup>6</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>7</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>8</sup> *Id.*

## **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>10</sup>

## **ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, she has not advanced a relevant legal argument not previously considered by it and she has not submitted relevant and pertinent evidence not previously considered by the Office. Her reconsideration request failed to show that it erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.<sup>11</sup>

## **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that her right shoulder condition was sustained in the performance of duty. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>9</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>10</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>11</sup> The Office received a number of documents pertaining to appellant's claim following the March 24, 2008 decision. The Board may only review evidence which was before it at the time of its final decision. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24 and February 26, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 12, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board